



R-CALF USA - 17th Annual Convention
Antitrust Issues in Food and Agriculture – An Update

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Overview



- Concerns about declining competition
- Trends in general merger enforcement
- Merger enforcement in food and agriculture
- Takeaways and issues to watch

Concerns Over Decreasing Competition



- Executive Order (April 2016)
 - **Steps to Increase Competition and Better Inform Consumers and Workers to Support Continued Growth of the American Economy**
 - Call for executive branch agencies to assess major competitive issues, impediments, etc.
 - As yet undeveloped priorities, agenda, and implementation will be key
- Council of Economic Advisors (April 2016)
 - **Benefits of Competition and Indicators of Market Power**
 - Flags rising market concentration, higher profits accruing to the largest firms, lower rates of firm entry
- Political traction
 - Party platforms - Democrats have antitrust enforcement “plank,” Republicans mention competition several times
 - Growing social, economic, political tension due to widening gaps in income and wealth inequality

Evidence of Increasing Market Concentration



- Proliferating studies of market concentration
- Consolidation and barriers to entry → higher concentration → higher prices → higher profits → shifting of wealth from labor to capital
- Examples of large concentration increases in U.S. sectors and markets (1997 – 2012)
 - Wireless telecommunications - 90% in 2012, up 50%
 - Passenger air transportation - 65% in 2012, up 25%
 - Credit card issuers - 80% in 2012, up 24%
 - Petrochemical manufacturing - 90% in 2012, up 20%
 - Insurance and pension funds - 75% in 2012, up 9%

Merger Enforcement Over the Last Two Administrations



- Statistics show that Obama was more aggressive than Bush
 - Merger Challenges
 - DOJ or FTC files complaint to stop a deal (litigation, settlement, or abandonment)
 - Of all transactions “cleared” to the DOJ or FTC, 13% were challenged under Bush, 17% under Obama
 - Cartels – corporate fines up 106% per year under Obama, up 45% per year under Bush
 - Monopolization – 2 + cases filed under Obama, none filed under Bush
- Examples of large failed mergers: Sysco-US Foods, Staples-Office Depot, Baker Hughes-Halliburton, GE-Electrolux

How Aggressive Has Enforcement Been in F&A?



- The statistics
 - about 30 total challenges in F&A
 - only 1% of F&A transactions were challenged
 - F&A was only 5% of total challenges
- How the challenges break down
 - Retail grocery – 32%
 - Food manufacturing – 26%
 - Agricultural inputs – 16%
 - Packing, processing, milling – 16%
 - Dairy – 6%
 - Distribution – 3%
 - Crops and livestock production – 0%
- Bush v. Obama
 - No overall difference in enforcement
 - Bush more aggressive on food manufacturing but Obama more aggressive on grocery

Major Takeaways



- F&A is a weak area of enforcement w/below average challenges across both administrations
- Massive consolidation in packing, processing, milling, manufacturing, and grocery
 - creation of powerful buyers/sellers
 - bottlenecking of the supply chain
- Agricultural inputs have seen highest level of increased concentration but little enforcement (watch Dow-DuPont, Monsanto-Bayer)
- Retail grocery consolidation continues, with divestitures the preferred method, even in face of past failures
- FTC has ignored the market for “shelf space” and the the role of bargaining between food companies and grocers

Issues to Watch



- High levels of concentration and few competitors in major markets mean more merger challenges (Sysco-US Foods)
- Growing evidence of failed remedies is slowing down/nixing settlements (Safeway-Albertsons)
- “Reactive” consolidation continues (e.g., bulking up to bargain) but is of increasing concern to the agencies (Comcast-Time Warner)
- Call for more coordination between antitrust enforcers and regulatory agencies (USDA, FDA)
- Challenging abusive practices by large players in biotech and packing/processing